

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10293 of 1995

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VS JHALA

Versus

DIRECTOR, EMPLOYEMENT & TRAINING

Appearance:

MR NAVALDAN R LANGA for Petitioner No. 1

MR LB DABHI, AGP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 05/07/2004

ORAL JUDGEMENT

1. The petitioner has challenged the judgement and order dated 24th May 1995 passed by Gujarat Civil Services Tribunal, in Appeal No.165/94, and the order dated 30.8.1991 withholding one increment of the petitioner.
2. The petitioner, along with others, was charged for causing hurt to Head Clerk of the office as a result

of which punishment of withholding one increment for a period of six months was imposed on the petitioner. The petitioner, therefore, preferred an appeal being Appeal No.448/91 before the Gujarat Civil Services Tribunal, which remanded the matter for fresh decision. Thereafter, after issuing chargesheet and after holding inquiry, the Disciplinary Authority withheld one increment without future effect. Against the said decision the petitioner preferred an appeal before the Gujarat Civil Services Tribunal. In the appeal the punishment came to be enhanced to stoppage of five increments without future effect instead of one increment without future effect. It is against the said decision the present petition has been preferred.

3. Heard the learned counsel for the respective parties. Learned counsel for the petitioner submitted that there is no good and sufficient reason for imposition of stoppage of five increments, especially when the Inquiry Officer in his report dated 25.6.93 held that the charge is not brought home and also because of the fact that the matter was compromised. He submitted that unless there are strong evidence, the penalty cannot be enhanced under Rule 21 of the Rules. Learned counsel further submitted that the penalty can be enhanced only by the appellate authority and the Tribunal is not an appellate authority.

4. I have perused the relevant documents on record and I find substance in the contentions raised by the learned counsel for the petitioner. The Tribunal, in an appeal filed by the petitioner, is not justified in enhancing the penalty of five increments without future effect. This would amount to substituting itself for the disciplinary authority. It may be that under Rule 21 of the Rules the penalty can be enhanced. But it can be done only on strong evidence and in a gross case. In the present case, looking to the gravity of the charge and other attending circumstances, the Disciplinary Authority has imposed the punishment of stoppage of one increment without future effect. However, there are no other special circumstances which required the Tribunal to enhance the punishment. In any case, looking to the gravity of the charges levelled against the petitioner, the imposition of punishment of stoppage of five increments without future effect is harsh and out of proportion. The Labour Court has clearly exceeded in its jurisdiction while enhancing the penalty. On the facts of the case, I am of the opinion that the order dated 4.2.1994 imposing penalty of withholding on increment without future effect is just and proper, and the order

dated 24th May 1995 passed by the Tribunal is illegal and bad which requires to be quashed and set aside.

5. In the result, the petition is partly allowed.

The judgement and order dated 24th May 1995, passed by Gujarat Civil Services Tribunal, in Appeal No.165/94 is quashed and set aside. The order dated 4.2.1994 withholding one increment without future effect is hereby confirmed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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